

FILED

IN THE UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO ALBUQUERQUE, NEW MEXICO

SEP 14 2012

WINGROVE E. MICHAEL, PRO SE
FED. REG. NO. 32189-051
PETITIONER,MATTHEW J. DYKMAN
CLERK

CASE NO.: CIV 12-464 MCA/LFG

CRIMINAL CASE NO.: CR 06-1833

V.

UNITED STATES OF AMERICA,
RESPONDENT.

MOTION FOR EXTENSION OF TIME TO FILE
REPLY TO GOVERNMENT'S RESPONSE AND OBJECTIONS
TO THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS CONCERNING PETITIONER'S § 2255 MOTION

NOW COMES, Wingrove E. Michael, pro se, Fed. Reg. No. 32189-051. the Petitioner (hereafter "Petitioner") and respectfully files this Motion For Extension Of Time To File Reply To Government's Response And Objections To The Magistrate Judge's Report And Recommendations Concerning Petitioner's § 2255 Motion (hereafter "Motion For Extension") which relates to Petitioner's Motion Under 28 U.S.C. Section 2255 To Vacate, Set-Aside, Or Correct Sentence (hereafter "§ 2255 Motion") which was originally filed with this Honorable Court on or about May 1, 2012. Petitioner avers that on September 4, 2012, prison officials caused to be delivered a copy of the Magistrate Judge's Findings and Recommended Disposition (hereafter "R & R") which has triggered this motion.(Doc. 10).

Petitioner is not represented by legal counsel and is thus

proceeding pro se, relying only on the assistance of other Federal inmates that are more familiar with legal research. Petitioner respectfully prays that this Honorable Court will interpret Petitioner's pro se motion in the interest of fairness and justice as well as the full protections afforded pro se pleadings as set forth in Haines v. Kerner, 404 U.S. 519, 30 L.Ed. 2d 652, 92 S. Ct. 594 (1972) and Ledbetter v. City of Topeka, Kan., 318 F.3d 1183, 1187 (10th Cir. 2003) ("Pro se pleadings, however inartfully pleaded, are held to less stringent standards than formal pleadings drafted by lawyers.").

DISCUSSION

Since Petitioner filed his § 2255 Motion, he has remained incarcerated at the Federal Prison Camp, in Edgefield, South Carolina. During the institutional inmate mail-call on September 4, 2012, Petitioner received the aforementioned R & R, which was signed by the Honorable Magistrate Judge Lorenzo F. Garcia and filed on August 27, 2012. Petitioner has no knowledge of when such legal mail was received by the institution, nor does he have any control over when he actually will receive such mail, especially in light of the Labor Day (September 3rd) Federal Holiday that occurred between the time that such documents were filed and such were received by Petitioner.

Petitioner respectfully presents three facts to this Honorable Court in support of his request for additional time to file his objections and reply;

- 1) Petitioner has never been served with a copy of Respondent's Response, nor has Petitioner been granted the opportunity to Reply to the Government's Response.

Included in the R & R is the statement that, "the United States filed a response [Doc. 9]. There was no reply." (R & R p.1). Petitioner avers that Petitioner has never been served a copy of any Government Response and only upon receiving the R & R was Petitioner made aware that any response was ever filed by Respondent. Pursuant to Federal Rules of Civil Procedure Rule 5, the Respondent was required to provide service upon Petitioner and was required to file the appropriate Certificate of Service certifying that service was made upon Petitioner. Since Petitioner never received a copy of such Response, Petitioner cannot ascertain whether service was properly attempted or not. As Petitioner is a Federal inmate, incarcerated in a federal prison, the two methods that service may be perfected is either by hand delivery, in-person or through the United States Postal Service. Petitioner avers that no U.S. Marshal, or other Federal Law Enforcement Agent has ever served such Response in person upon Petitioner. Furthermore, Petitioner has inquired with Federal Bureau of Prison (hereafter "BOP") staff if any legal documents have been forwarded to them, for further forwarding to Petitioner. BOP Staff have repeatedly avowed that no such documents have been delivered to the Federal Prison Camp, in Edgefield, South Carolina that constitute legal mail, nor are any such documents being currently held by the institution mailroom personnel for future delivery to Petitioner.

Rule 5(d) of the Rules Governing Section 2255 Proceedings

state that "a party may submit a reply to the respondent's answer or other pleading within a timeframe fixed by the judge". (Rule 5(d)). Accordingly, Petitioner would respectfully request that this Honorable Court afford Petitioner the necessary time and opportunity to file such reply.

- 2) Additional time to file both the reply and the objections are required since certain legal materials are currently off-limits to Petitioner.

Because of Petitioner's incarceration, Petitioner must adhere to strict BOP rules and regulations, concerning housekeeping and storage of materials, including legal materials. Because of these rules, a majority of Petitioner's legal materials have since been either placed in a separate inaccessible BOP controlled remote storage area or have been sent home for safekeeping. In order to be granted access to his legal materials kept in the BOP controlled remote storage area, Petitioner has to request assistance from his Counselor. Unfortunately, at this immediate time, Petitioner's Counselor is away, and partially due to security issues, a definite return date is unknown to Petitioner. The only information that Petitioner has been made aware of is that, "you'll have to wait until your counselor gets back next week". This means that Petitioner will not be able to file any substantial objections without the access to his legal materials.

- 3) Additional time to file both the reply and the objections are required since certain of his legal files have already been

3) (continued): shipped home due to Petitioner's anticipated release from a BOP secured facility

Because of the lack of storage space and the passage of time between the filing of Petitioner's original § 2255 Motion and receipt of the R & R, and most importantly, Petitioner's anticipated designation to a release facility or home confinement, Petitioner has indeed been required to downsize his paperwork and has had to comply with the BOP's instructions by mailing to his family additional legal documents that might also be needed to prepare and finalize his reply to the Respondent's response and to prepare and file his objections to the R & R. Once the response is received from the Respondent, Petitioner will have to request that certain of these files are returned to him, here at the prison.

In any event, even after the legal materials are made available to Petitioner, both from his family members and from the BOP remote access area, Petitioner will require additional time in order to prepare a meaningful reply and objections, worthy of this Honorable Court's review.

RELIEF REQUESTED

Petitioner respectfully requests both the opportunity to receive a copy of Respondent's Response and file the appropriate reply, along with the opportunity to respond to the R & R. As to receiving a copy of Respondent's Response, Petitioner has written to the Clerk of Court, requesting a copy of such filing, along with a separate request directed to counsel for Respondent.

(See Exhibits A & B).

Petitioner states that only once he has received a copy of the Respondent's Response; received access to his legal materials from both his family and the BOP; and finally prepared his reply to Respondent's Response will Petitioner be able to properly address and prepare his anticipated objections to the R & R. Giving the fact that Petitioner is conducting all these functions within the confines of a restricted environment, Petitioner respectfully requests 60 days, until November 7, 2012 to file both his Reply and his anticipated objections to the R & R. This request allows for approximately two weeks for receiving a copy of Respondent's Response and collecting the required legal materials; an additional two weeks to analyze, research and prepare a reply to Respondent's Response; and approximately 30 days to prepare and file the anticipated objections to the R & R. It would be Petitioner's intention to prepare and file both his reply and objections simultaneously on or before the requested November 7, 2012 deadline.

CONCLUSION

For all the supporting reasons stated within this Motion, Petitioner respectfully requests an additional 60 days, until November 7, 2012, in order to prepare and file both a reply to Respondent's Response and objections to the Magistrate Judge's Findings and Recommended Disposition.

Respectfully submitted on this 7th day of September, 2012,
pursuant to the "prison mailbox rule" Houston v. Lack, 101 L.Ed.
2d 245 (1988), by placing an original of this Motion For Extension
Of Time To File Reply To Government's Response and Objections To
The Magistrate Judge's Report And Recommendations Concerning
Petitioner's § 2255 Motion, in the institutional mailbox receptacle
for outgoing inmate mail at the federal Prison Camp in Edgefield,
South Carolina, all postage prepaid, addressed to Matthew J.
Dykman, District Clerk; United States District Court; District of
New Mexico; Pete V. Domenici U.S. Courthouse; 333 Lomas Blvd. N.W.,
Suite 270; Albuquerque, New Mexico 87102.

Wingrove E. Michael
Wingrove E. Michael, pro se
Fed. Reg. No. 32189-051
Federal Prison Camp
Unit D-3
P.O. Box 725
Edgefield, South Carolina
29824-0725

CERTIFICATE OF SERVICE

I, Wingrove E. Michael, pro se, Fed. Reg. No. 32189-015, the
Petitioner in this Motion For Extension Of Time To File Reply To
Government's Response and Objections To The Magistrate Judge's
Report And Recommendations Concerning Petitioner's § 2255 Motion,
does affirm and certify, under penalty of perjury in accordance
with 28 U.S. C. § 1746, that a true and correct copy of the
foregoing motion was placed in the Federal Prison Camp, at
Edgefield, South Carolina mail receptacle for outgoing inmate mail,
for forwarding by regular U.S. Mail, all postage and fees prepaid
on this 7th day of July, 2011, addressed to counsel for the
Respondent as follows:

Mr. Damon Martinez, A.U.S.A.
U.S. Attorneys Office
P.O. Box 607
Albuquerque, New Mexico 87103

Respectfully Submitted,

Wingrove E. Michael
Wingrove E. Michael, pro se

WINGROVE E. MICHAEL
FEDERAL PRISON CAMP
UNIT D-3
P.O. BOX 725
EDGEFIELD, SOUTH CAROLINA 29824-0725

COPY

Mr. Damon Martinez, A.U.S.A.
U.S. Attorneys Office
P.O. Box 607
Albuquerque, New Mexico 87103

September 5, 2012

Re: Michael v. United States, Civil Case No.; CIV 12-464 MCA/LFG
Request for copy of Respondent's Response (Doc. #9)

I have received a copy of the Magistrate Judge's Findings and Recommended Disposition (Doc. #10), which was filed with the Honorable Court on August 27, 2012. On page one of such document, it references a document referred to as Doc. #9, a response filed by Respondent. I have never received such service copy of such document, nor do I know if the certificate of service properly notes that a paper copy was indeed mailed to me. As you are quite aware, federal inmates must rely solely on such paper copies, as federal inmates do not have access to the electronic filing system of the court. I respectfully request that a copy, or duplicate copy if one was previously mailed, be sent to me as soon as possible.

For your information, I will also be requesting an extension to file a reply and my anticipated objections to the Magistrate Judge's report and recommendations. A copy will be forward to you under separate cover.

Thank you in advance for your prompt reply to my request.

Very Truly Yours,

Wingrove E. Michael, pro se

Exhibit A

WINGROVE E. MICHAEL 32189-051
FEDERAL PRISON CAMP

UNIT D-3

P.O. BOX 725

EDGEFIELD, SOUTH CAROLINA 29824-0725

COPY

Matthew J. Dykman, District Clerk
United States District Court
For the District of New Mexico
Pete V. Domenici U.S. Courthouse
333 Lomas Blvd. N.W. Suite 270
Albuquerque, New Mexico 87102

September 6, 2012

Re: Michael v. United States, Civil Case No.; CIV 12-464 MCA/LFG
Request for copy of Respondent's Response (Doc. #9) and docket

Dear Mr. Dykman,

Yesterday, September 5, 2012, I received a copy of Magistrate Judge's Findings And Recommended Disposition (Doc. #10), which was filed with the Honorable Court on August 27, 2012. On page one of such document, it references a document referred to as Doc. #9, a response from the United States of America, the Respondent. As a Federal inmate, currently incarcerated at the Federal Prison Camp, in Edgefield, South Carolina, I have no electronic access to the court's electronic filing system. Thus, I must rely upon receiving paper copies via the U.S. Postal Service. I have never received a copy of the referenced Document #9, therefore, I am respectfully requesting that a copy of such Document #9, along with a copy of the docket be sent to me at your earliest convenience. For your information, I will be notifying the Honorable Court of the lack of receiving proper service of such pleading and will be requesting an extension of time to respond to the aforementioned Magistrate Judge's Report and Recommendation.

Thank you in advance for your prompt attention and consideration to my request.

Respectfully Submitted,

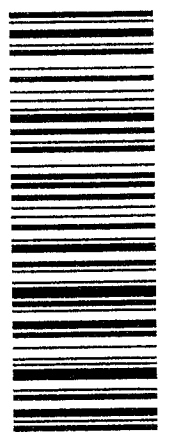
Wingrove E. Michael, pro se

Exhibit B

WINROBE E. MICHAEL 32189-051
FEDERAL PRISON CAMP
UNIT B-3
P.O. Box 725
Edgefield, South Carolina 29824-0725

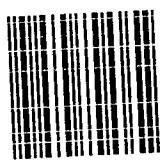
03

CERTIFIED MAIL



7011 1570 0003 4694 4941

U.S. POSTAGE
PAID
EDGEFIELD, SC
29824
SEP 11, 12
AMOUNT
\$0.00
00046574-03



87102



1000

RECEIVED
At Albuquerque NM

SEP 14 2012

MATTHEW J. DYKMAN
CLERK

32189-051
Mathew J Dykman Clark
333 Lomas BLVD NW
PETE V. Damentici U.S. Court
Albuquerque, NM 87102
United States

